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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 21 August 1992, at 10 a.m.

Chairman: Mr. ALFONSO MARTINEZ

later: Mr. SACHAR

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The meeting was called to order at 10.10 a.m.

THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS (agenda item 7) (continued) (E/CN.4/Sub.2/1992/41)

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 8) (continued) (E/CN.4/Sub.2/1992/15; E/CN.4/Sub.2/1992/16; E/CN.4/Sub.2/1992/41; E/CN.4/Sub.2/1992/44; E/CN.4/Sub.2/1992/50; E/CN.4/Sub.2/1992/WP.1; E/CN.4/Sub.2/1992/NGO/2; E/CN.4/Sub.2/1992/NGO/3; E/CN.4/Sub.2/1992/NGO/5; E/CN.4/Sub.2/1992/NGO/7; E/CN.4/Sub.2/1992/NGO/15; E/CN.4/Sub.2/1991/17; E/CN.4/1992/NGO/33)

1. Mr. KUBRA (Observer for Iraq), speaking on agenda item 7, said that the new international economic order consisted of a series of texts and positions that were in fact hostile to the developing countries, despite all the efforts that the latter had made for so many years to assert their viewpoint within the United Nations and notwithstanding all their difficulties. The developing countries were subjected to the new order, imposed by the United States and its allies, who were seeking to solve their own problems at the expense of the third world. Recent political developments had imposed further constraints on that third world where all who tried to protest were silenced.

2. Regarding agenda item 8 and Mr. Türk's report on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1992/16), he drew attention to the obstacles to the implementation of those rights whose protection it was absolutely essential to guarantee. Iraq was encountering special difficulties because of its shortage of foodstuffs, medicines and other essential goods. In view of that shortage, he asked what the United Nations was doing to defend the rights of Iraq. There again, no one protested, because of the hegemony of the United States and its allies within the United Nations. The people of Iraq were doing their best to rebuild their infrastructure, but the coalition leaders were doing everything to thwart that process of reconstruction and to push Iraq back to a pre-industrial stage. Iraq wanted to rebuild its hospitals, bridges, schools, power stations and to infuse new life into its agriculture. But the United States had repeatedly burnt the grain crops, thus proving that its action was deliberate policy and not an accident as it claimed. Iraq also wanted to continue work on a third river project, that had been launched in the early 1950s and in which the United States, Great Britain and other countries had participated. The aim of the project was to extend the arable land surface and to undertake desalinization works; the project was unrelated to the marshlands in the southern part of the country, as some maintained, arguing that the project would be harmful to the inhabitants of the marshlands. He wondered how anyone could speak of economic, social and cultural rights when Iraq could not be guaranteed an adequate supply of food and medicines.

3. At its previous session, the International Law Commission had emphasized the need to take practical measures to maintain peace in the region and political independence. In that connection, he quoted paragraph 12 of document A/CN.4/L.478/Add.2 and paragraph 47 of document A/CN.4/L.478 which stated that it was imperative to halt all hostile measures and all sanctions designed to isolate countries, in flagrant contradiction of contemporary international law. It was only because of the political pressure which was

being exercised on the international scene that the international community accepted the violations of which the Iraqi people were the victims.

4. Mrs. GALVIS (Observer for Colombia), referring to Mr. Türk's report on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1992/16) drew the attention of the Sub-Commission and the other bodies concerned with the defence of human rights to the serious consequences for the realization of these rights of what was called the new international economic order, which featured the opening up of the countries to the international markets and the spreading of private enterprise.

5. At the insistence of the international financial institutions, the developing countries had embarked upon a process of structural adjustment which admittedly comprised positive elements, because they enabled the economy to be reactivated and to be placed on more solid foundations. Still, those structural adjustment programmes also entailed risks for social peace and order and they would certainly have engendered rather more enthusiasm if they had taken into account the social issues, which were so important and so explosive in the developing countries. Economic growth alone was unacceptable as the yardstick of progress. Traditional liberal democracy was a theoretical structure which, in its pure form, had existed only in the minds and works of eighteenth century Europeans. It was only after the Second World War, when the social issues had been taken into account in Europe, that the European people had been able to aspire to wellbeing and progress. The developing countries were not an abstract reality; they could not live by the mere concept of freedom. They were seeking a model for development that included the civil and political as well as economic, social and cultural rights without any structure. Colombia and the Rio Group had sponsored the resolution which the Economic and Social Council had just approved, recommending that the United Nations General Assembly should convene a social summit for development, which could allow the concept of human development to be translated into reality.

6. On another subject, she drew attention to the phenomenon of the drug traffic, which was an absolute scourge for the international community. Although production took place in the developing countries, consumption affected mainly the developed countries. A significant proportion of the young people were unable to enjoy their economic, social and cultural rights because of the effects of drug dependency. However, as long as the consumption channels were not dismantled, it would be impossible to put an end to production once and for all. Everyone was aware of the extent of the problem which stemmed from the cultivation of coca, a plant native to the Latin American countries. Less was known about the cultivation of the poppy which was not native to the region but had been introduced in it to satisfy the greed of the traffickers. At present, its cultivation extended over thousands of hectares, mostly land belonging to the indigenous populations, who were being forced to grow it by organizations linked to the Mafia which did not hesitate to murder anyone who refused. Colombia had tackled the problem courageously with respect for the communities concerned, refraining, inter alia from using chemical products to eradicate the crops so as not to endanger the livelihood of the populations concerned. The Government had thus signed with the indigenous authorities in the north of the department of Cauca an agreement to eradicate poppy growing which specified the obligations

contracted by each. The delegation of Colombia could make a copy of that agreement available to the experts of the Sub-Commission.

7. However, those efforts would be pointless unless the international community shouldered its responsibilities, adopted the necessary measures to stop consumption and enforced, in conjunction with international cooperation, crop substitution programmes in all the regions affected. Only the creation of means of subsistence could dissuade people from going in for drugs trafficking. The international community should complement the efforts of Colombia by assuming responsibility for comprehensive development programmes. She appealed to all the agencies within the United Nations system to do everything in their power to develop machinery for effective cooperation that would serve as an instrument for the promotion of human rights and which would not be hamstrung by conditions that turned that cooperation into a body which passed judgement. She appealed for solidarity and said that she herself supported all who advocated a just and universal international order.

8. Mr. DESPOUY said that he would speak on agenda items 7 and 8. Regarding the obstacles to the realization of the economic, social and cultural rights, and in particular in response to Mr. Abram, who the day before had praised free enterprise, he analysed a number of international factors which impeded the realization of those rights. He noted, for example, the economic disparity between the developed and developing countries, a disparity which not only was not decreasing but actually increasing. He quoted a number of particularly significant figures: 20 per cent of the States Members of the United Nations possessed 82 per cent of total world income, whereas the poorest 20 per cent had only 1.4 per cent of that income. He listed some of the factors contributing to that disparity and referred in particular to the low rate of participation by the poor countries in international trade. Their trade accounted for no more than 19 per cent (whereas it had reached 25 per cent) of all world trade. There were other factors: the decline in the prices of primary commodities, the enormous burden represented by debt repayment and the unfair competition constituted by the subsidies paid directly or indirectly by the industrialized countries. Contrary to what was generally believed, international trade was far from free.

9. Despite the efforts by the United Nations - and he was thinking especially of the establishment of the GATT - to free international trade, only 7 per cent of trade was being conducted in conformity with the rules formulated by that body, at a time when economic and political freedom were supposed to prevail. The countries with a liberal tradition all engaged in practices that were incompatible with the GATT rules, and distorted the international market.

10. The debt was another structural problem. He quoted some figures: the debt burden accounted for 17 per cent of the income of the developing countries, and only 4 per cent of that of the industrialized countries. Between 1982 and 1989, the developing countries had repaid the industrial countries $142,000 million.

11. The technological gap between the rich and poor countries was another factor: 90 per cent of research was carried out in the developed countries, which thus held a monopoly on industry and knowledge. Furthermore, an

increasing number of restrictions was being imposed on the labour market and only intellectuals and very highly qualified persons from developing countries could emigrate to the developed countries.

12. It was in that context that thought should be given to the measures to be taken in order to bring about the realization of economic, social and cultural rights. For his part, he had focused his thinking on the actual concept of development which had for too long been restricted to its purely economic facet. In fact, mere growth had often been held up as the only indicator of development; it had been forgotten that growth was often incompatible with social well-being. Nevertheless, he noted that a positive trend, consisting of taking other parameters into account, had for some years been emerging at in the United Nations itself. To the parameters of growth rates, per capita income and steel consumption, which he deemed to be too artificial, some had been added social parameters which made it possible to see rather more accurately how far the enjoyment of economic, social and cultural rights was guaranteed: for example, access to health care, literacy, infant mortality, etc. He welcomed that trend and the concept, which was a recent one, of sustainable development that also made provision for the involvement of peoples in their own development. Even within the economic bodies of the United Nations such as UNDP, the social dimension of development was being increasingly incorporated and it was being recognized that there was no incompatibility between economic growth and the quality of development. He also wished to point out that extreme poverty was a wound which also affected the developed countries with a very high standard of living.

13. He regretted the absence from the meeting room of the representatives of the IMF and the World Bank, which placed too high a priority on the economy. In that connection, he pointed out that donor countries allocated on the average 0.3 per cent of their GNP to assisting the developing countries. A different allocation of the cooperation programmes could be seen and United Nations in particular was embarking on bold programmes. For example, the assistance given to Paraguay, under the dictatorship, was the equivalent of $0.5 million, but at present it amounted to $20 million per year and the following year would increase to $50 million per year. Forty per cent of those sums would in the future be allocated to social priorities, particularly in the area of human rights. That was a new challenge which the United Nations should take up and, on that subject, he requested that the Centre for Human Rights should provide fuller information on the programmes (requests, evaluations) and consequently figures.

14. He noted that another trend emerging in the United Nations, namely that the local offices which for a long time had not been able to intervene had been participating directly in the distribution of credits and had been allocating a part of those funds to social priorities and human rights, as had been observed in El Salvador and Guatemala. Lastly, he drew attention to the phenomenon of extreme poverty which constituted not only a scourge in itself but also a total denial of all rights, whether economic, social and cultural or civil and political.

15. Mr. EIDE drew the attention of the Sub-Commission first of all to an appeal made by several NGOs concerning the situation of those populations

which had been deprived of their most elementary rights to food and health because of the sanctions imposed by the international community on their countries, as in Iraq or Yugoslavia, or because of an economic blockade as in Nagorny-Karabakh. The matter was a very serious one with which the Sub-Commission should concern itself. It was important to ensure that food was never used as a weapon.

16. Generally speaking, he agreed that work should continue on the study on the right to decent housing entrusted to Mr. Sacher, because it was indispensable, as Mr. Türk had noted in his report (E/CN.4/1992/16), that certain specific aspects of economic, social and cultural rights should also be addressed. In that report, Mr. Türk had made a very clear analysis of all the problems involved in the realization of those rights and the Sub-Commission should examine closely the recommendations he had made. The debate on economic, social and cultural rights was affected by the unwillingness to put aside ideological considerations and concentrate on practical issues. If in a positivistic sense, rights were often understood as enforceable claims made by one specific group upon another group to obtain the delivery of goods, services or protection from the other, and if therefore no right existed unless it was demanded, the same could not hold good for the human rights set forth in the international agreements, which could not be contemplated in that positivistic manner. Rather, human rights were general standards which should be given concrete meaning through specific action, which called for a process of normative clarification and gradual incorporation into the legal systems of each State. It appeared, however, that the precise content of a certain number of economic, social and cultural rights, as well as the obligations which they implied for States to recognize them, had never been clearly defined, at least not as clearly as had been the case with certain civil and political rights. As a result, States very often tended to neglect the first. It was therefore necessary to clarify the scope of those rights and the corresponding State obligations. Some claimed that a State was not bound to ensure the realization of economic, social and cultural rights, since the implementation of the provisions of the International Covenant on the Economic, Social and Cultural Rights was a political matter, not a matter of law and hence not a matter of rights; that argument was hardly tenable because the adoption of laws was always a matter of politics. States should incorporate international human rights instruments into their domestic laws and administrative regulations. That applied to all rights, whether civil, political or economic, social and cultural.

17. Cultural and ideological factors also impeded the realization of human rights. Attitudes towards the rights enunciated in the international instruments varied significantly from country to country and were influenced by particular religious and cultural traditions. Thus, the concept of economic and social rights met resistance in the United States but was broadly accepted in other countries, including the welfare States of western Europe. Rights for minority groups were generally endorsed in the countries of central and eastern Europe, but not in some western States, deeply wedded to the ideology of the unitary nation or to the notion of the "melting pot". Those cultural obstacles, which were admittedly difficult to overcome, should be taken into account by the development bodies, in the formulation of strategies for promoting the realization of those rights and with respect for the diversity of world society.

18. The realization of economic, social and cultural rights also encountered another obstacle which stemmed from the different theories of development and in particular the theory of transition. Thus, for some, civil and political rights could only be safeguarded when material needs had been satisfied. For others, it was the reverse. He subscribed to neither theory, but felt that the exercise of some rights, whether civil and political or economic, social and cultural could be ensured even at a very low level of economic development. Much more crucial was the theory that an order of priorities should be established not among the different categories of human rights but between the safeguarding of all rights and the achievement of economic growth. That theory according to which capital accumulation must precede the satisfaction of rights was advanced, with a different aim in view, by the adherents of both Marxism and capitalism. The latter envisaged that at certain stages of development, it was difficult to protect and guarantee civil and political or economic and social rights, and that, to the extent that the civil and especially the political rights constituted an obstacle to rapid economic growth, they should be limited. The former considered that, in order to achieve abundance through capital accumulation, a transitional period (the dictatorship of the proletariat) was necessary, during which civil and political and many economic and social rights would be denied.

19. That led him to revert to the statement made the day before by the representative of the IMF in the Sub-Commission. His presence was furthermore additional proof that a dialogue had started between the human rights bodies and the international financial institutions and indicated that human rights issues were now beginning to be a matter of concern for those institutions which held the real power in the contemporary world. However surprising it might appear, there were some similarities between the reasoning of the IMF and that of Karl Marx. He saw for example a connection between the Marxist theory that human rights violations were inevitable during all the stages of the transition to an ideal society, in other words communist society, which was supposed to lead to happiness for all and the concept of structural adjustment. Indeed, the way that concept had been interpreted at certain stages left the impression that the negative effects on human rights of the structural adjustment programme were an inevitable part of the process, which would lead in the longer or shorter term to what was called lasting growth. The second similarity with the Marxist theory was the deterministic attitude, echoed by the representative of the IMF, when he said that there was no viable alternative to structural adjustment. The Special Rapporteur was, moreover, taken to task for having suggested that others should be explored. Fortunately, the representative of the IMF had also said that the choice was between forced, haphazard adjustment and optimal strategies, that took all aspects into account, thus leaving the door wide open for dialogue. That dialogue should lead the international financial institutions to understand that a strategy - even an optimal one - that took no account of human rights, was doomed to failure. Furthermore, it would be wrong to believe that only a few financial institutions were in a position to say what should be the content of an optimal adjustment strategy. There was certainly a great deal to be learned from the financial institutions but they did not have the monopoly of wisdom.

20. Reverting to the question of economic, social and cultural rights, he noted that the emphasis was often placed on the cost of applying them, based

on the principle that those rights could only be guaranteed by the State. Such an interpretation of the nature of those rights and the corresponding State obligations was incorrect, because State intervention was not necessarily required, and was even less so sometimes in that case than in the case of civil and political rights. It should be recalled that in the terms of the Declaration on the Right to Development "the human person is the central subject of development and should be the active participant and beneficiary of the right to development" and that "all human beings have a responsibility for development, individually and collectively". That meant that all human beings should find by themselves the means to satisfy their needs, by drawing on their own resources, individually or in an association with others. That was the perspective from which State obligations should be considered and which could be defined at three levels. At the first level, States should respect the freedom of individuals to take necessary measures and utilize the necessary resources to meet their needs. At the second level, States should also protect that individual freedom of action against other more aggressive groups. That was the most important aspect of the role of the State - considered not as a provider but as a protector - in the realization of the right to food, which corresponded to the idea of providing "space" proposed by Mr. Türk in paragraphs 187-194 of his report. At the third level, States had the obligation to meet the aspirations of all to enjoy the right to adequate food in two ways, on the one hand by providing opportunities for those who had none, and on the other, by directly providing the necessary material resources for that purpose to certain disadvantaged or vulnerable groups, for example in a recession or during a crisis. It was therefore a gross over-simplification to say that economic and social rights differed from civil and political rights in that the former required the use of resources by the State. The debate on that issue had always led to an impasse and he sincerely hoped that it would be abandoned and that in future attention would be focused rather on how all rights, whatever they were, could be implemented without using one against another. In conclusion, he referred to the recommendations made by Mr. Türk in his report and said that he hoped that a useful and fruitful dialogue could be started between the human rights bodies and the international financial institutions, with emphasis being placed on the fact that the latter should take into account certain social and economic considerations in their adjustment strategies.

21. Mr. SACHAR reasserted that, as stipulated in article 6 of the Declaration on the Right to Development, "all human rights and fundamental freedoms are indivisible and interdependent". There were one billion people living in absolute poverty in the world today and it was certainly not by reading them their civil and political rights, as Mr. Abram seemed to suggest, that their situation would be improved.

22. The structural adjustment policies applied in many developing countries at the request of the international financial institutions had had extremely negative effects on economic, social and cultural rights, and in many cases, those policies had even aggravated the situation of the poor, as had been indicated in the Secretary-General's report (E/1990/81) quoted by the Special Rapporteur in paragraph 60 of his report. Much was made of the contribution by the multinationals to the development of the economies of those countries and to their exports in particular but it was only a mirage. A report published in 1988 by the United Nations Centre on Transnational

Corporations indicated that foreign direct investment was oriented primarily towards producing abroad for the domestic market of the host countries rather than towards exporting. That was particularly true in the case of India, which had suffered the onslaught of the multinationals, as part of what was euphemistically called the globalization of the economy. A study had shown, furthermore, that the net import rate of 144 Indian companies had declined from 6.2 per cent in 1977 to 4.0 per cent in 1988 and that those companies had shown an average loss of over $300 million during the period from 1985 to 1988. Yet, the World Bank and the IMF continued to demand that, as part of the structural adjustment process, India and other countries in a similar situation should open up their markets to the multinational corporations, assuring them that those companies and privatization were the saviours of the world economy, whereas the situation of the largest corporations in the United States that had announced losses of millions of dollars, proved the opposite. The argument, often heard, that the lenders had the right to lay down the conditions for borrowers, should not be accepted in the case of the international institutions. Modern jurisprudence in international law had developed the principle that a contract was null and void if one of the parties was stronger than the other. The international financial institutions should only ensure that the funds they granted were not misused, but they had no right to determine the economic and financial policies of the borrowing countries. That was the purview of the rightfully elected Governments of those countries. That situation posed a serious moral and legal dilemma, all aspects of which should be dealt with by the Sub-Commission.

23. He recalled that, for some time, the world economic environment had not been particularly friendly to the developing countries and highlighted that the South had reached the stage where it was currently transferring $20 billion a year to the North. He warned against the danger of indiscriminate privatization, because a free market was not particularly favourable to the poor. Consequently, he approved of Mr. Türk's suggestion that they should be protected by affordable safety nets and deplored the complete lack of sensitivity to the plight of the poor in the developing countries demonstrated by the representative of the IMF, who had taken pleasure in emphasizing that those safety nets should be temporary. By imposing sacrifices on the poorest, even for a limited time, the IMF and the World Bank were making a mockery of the suffering of the vast majority of the world's population which was already living below the poverty line. The Sub-Commission had an obligation to pay special attention to that indifference to human rights problems on the part of the international development agencies. In fact, the problems that those agencies were seeking to settle did not only affect trade, they were also human rights problems and should be treated as such.

24. He also thanked all those speakers who, during the discussions on the various items, had commented on his working paper (E/CN.4/Sub.2/1992/15) and assured them that he had taken due note of the advice given as to how the subject of the paper could be studied in greater depth.

25. M. ZHANG Yishan (Observer for China), speaking in exercise of the right of reply, refuted the slanderous statements against the Chinese Government

made by Mrs. Choephel, a Tibetan separatist, in the name of the International Association of Educators for World Peace. That Association was merely attempting to mislead the Sub-Commission, by raising once again the so-called human rights issues in Tibet. Regarding the alleged large-scale migration of Chinese into the Tibet Autonomous Region, which reduced the Tibetans to a minority in their country, he said that according to the census of July 1990, 95.46 per cent of the population of Tibet was Tibetan, whereas the Han Chinese accounted for only 3.7 per cent; since 1951, the Tibetan population had even doubled. The allegations made the day before were therefore a complete fabrication.

26. As to the plundering of Tibetan financial resources by the central Government of China, the fact was that the Government had channelled nearly 3 billion dollars into the Tibetan region, in the form of subsidies and investments, and had not levied a single cent of tax. Moreover, all the foreign exchange earnings of the region remained there.

27. Lastly, with respect to the negotiations between the Dalai Lama and the Government which, according to the speaker of the previous day, should have no preconditions, he explained that the Chinese Government had repeatedly expressed its willingness to enter into talks on any issue except that of the independence of Tibet. The Dalai Lama and his followers had endeavoured to win sympathy abroad by inciting riots to serve their separatist aims and recover their status as slave owners. Full responsibility for the failure of the talks rested with the Dalai Lama because of his refusal to renounce his position on the separation of Tibet from China. The question of Tibet was by no means a human rights issue, but was only being presented as such by the Tibetan separatists. China would resolutely oppose any interference in its territory and the Commission on Human Rights, for its part, had already rejected activities that were contrary to the principles of international law and to the spirit of the Charter of the United Nations.

28. Mr. PINTA GAMA (Observer for Brazil), said that he wished to inform the World Organization Against Torture that his Government was aware of the poverty and violence affecting millions of Brazilian children and adolescents were the victims and was committed to resolving those problems and cooperating with the concerned sectors of society and the international community as well as with the non-governmental organizations.

29. As a State party to the Convention on the Rights of the Child, in order to promote those rights, Brazil had enacted domestic legislation, namely the Statute of the Child and Adolescent, which was considered as a model by UNICEF. In addition, top priority was being given to programmes aimed at protecting the rights of children throughout the country and, integrated child-support centres (CIACs) were being built on the peripheries of large towns and in the rural areas where help, particularly education, food, care and leisure activities were available to children under 14 years of age. It was a costly plan, which the Government was carrying out despite the economic recession.

30. The Government was showing the same determination in combating violence against the street children. In that struggle, it had mobilized all the competent national, municipal, judicial and religious authorities, as well as

the leaders of Brazilian society and the State police forces. As a result, it had thus already succeeded in breaking the cycle of immunity. One hundred and eighty-three extermination groups had been detected and 180 people arrested and charged. The cases of child extermination had decreased in number, but efforts would not cease until that abhorrent practice had been completely eradicated. SOS Torture had been right to link that issue with that of the new economic order and the realization of economic, social and cultural rights, because violence against children stemmed ultimately from poverty, marginalization and underdevelopment. Only a fair distribution of income and opportunities in the country and greater international solidarity could reverse that situation.

31. Mr. TÜRK referred to the points raised by his colleagues on his report. Some had spoken of equity and justice in the distribution of income. He pointed out that he had first dealt with that question in paragraph 35 of his report, where he had placed it in a conceptual context, criticizing the policies of the countries of Eastern Europe which had sought absolute equality and not equity, which implied the necessary differentiations. He recognized, however, that real problems arose when practical situations had to be faced and that it was difficult to achieve a kind of equity - and therefore differentiation - that was satisfactory and to know just how far one could go at the international level, because policies necessarily varied from one country to another. Since he did not have the necessary resources and information at his disposal, he had only touched lightly on that aspect of the problem in paragraphs 226 and 227 of his report, and had recommended that solutions should be sought in public expenditure and taxation policies. He also thought it desirable that the Sub-Commission should examine the matter more thoroughly.

32. Turning to the second major issue taken up by his colleagues, namely the central role of the State in the development of policies conducive to the realization of economic, social and cultural rights, he noted that they were advocating criticizing those States that did not take those rights into account in their national policies. As the members of the Sub-Commission had been aware for a long time, he was in full agreement with them on that point. Another aspect of the question of economic, social and cultural rights had to do with measures to promote a democratic climate and economic integration, which could be one way of realizing those rights. That was another area which the Sub-Commission could study further.

33. Nevertheless, while practical steps were important in the matter of economic, social and cultural rights, the legal aspects of the question should not be minimized. Mr. Bossuyt and Mr. Boutkevitch had made an excellent analysis of them which should be explored further. Mr. Bossuyt had proposed, and rightly so, that greater attention should be given to the obligations of States because in the final analysis the aim was to ensure that those rights could be invoked before a court of law. Still, he emphasized, that aspect, in fact, came within the purview of the Committee on Economic, Social and Cultural Rights. It was not for the Sub-Commission to take the place of the Committee, but it was very well placed to assist it. He recalled that, for his part, he had emphasized the use of indicators which would make it possible to measure the progress achieved, because there was also the idea of a

"progressive" realization of rights. That was an activity which fell squarely within the mandate of the Sub-Commission.

34. During the debate on the item under consideration, it had also been observed that the realization of human rights was increasingly conditional on external factors and that the States had fewer and fewer means of coping with them by themselves and in their own way; that situation obviously encroached somewhat on their sovereignty. He referred to Mr. Eide's statement on the subject. He regretted that after having stated the position of the World Bank and the IMF on the subject, the representatives of those organizations had left before the deliberations on agenda items 7 and 8 had been concluded, because a genuine dialogue could then have taken place. He was convinced that cooperation with those important agencies was indispensable and he reiterated his recommendation that a seminar should be organized at which they would be represented and where the subjective concepts of "qualitative" growth, "affordable" safety nets or "optimal" strategy would be spelt out and defined more objectively using specific criteria. For example, a strategy to be optimal in that sense would be defined as having to be socially acceptable and respectful of the environment and human rights. Pointing out that the work to be done was very considerable, he concluded by referring to Mr. Despouy's statement on extreme poverty, which, in his view, deserved to be the subject of a resolution by the Sub-Commission.

35. The CHAIRMAN announced that the general debate on agenda items 7 and 8 was closed.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (E/CN.4/Sub.2/1992/4; E/CN.4/Sub.2/1992/5; E/CN.4/Sub.2/1992/6; E/CN.4/Sub.2/1992/7 and Add.1; E/CN.4/Sub.2/1992/8; E/CN.4/Sub.2/1992/9 and Add.1; E/CN.4/Sub.2/1992/10; E/CN.4/Sub.2/1992/NGO/8; E/CN.4/Sub.2/1992/NGO/9; E/CN.4/Sub.2/1992/NGO/10; E/CN.4/Sub.2/1992/NGO/18; E/CN.4/Sub.2/1991/55; E/CN.4/1990/56; E/1992/67; A/47/289)

36. Mr. CISSE (Centre for Human Rights) introduced agenda item 4. He said that the Sub-Commission surveyed a broad range of activities in connection with the promotion and protection of human rights as attested to by the note by the Secretary-General before the Sub-Commission (E/CN.4/Sub.2/1992/4), which supplemented the annotations to the provisional agenda. The Sub-Commission also had before it the reports of the International Labour Organisation and UNESCO contained in documents E/CN.4/Sub.2/1992/5 and E/CN.4/Sub.2/1992/6 respectively. The Sub-Commission had also been concerned with the issue of compensation for victims of gross violations of human rights and had instructed Mr. van Boven to prepare a study on it. Mr. van Boven's second progress report was contained in document E/CN.4/Sub.2/1992/8. Under that item, the Sub-Commission also dealt with human rights and the environment and had instructed Mrs. Ksentini to follow up that question. Mrs. Ksentini's report appeared in document E/CN.4/Sub.2/1992/7 and Add.1. Agenda item 4 dealt with the question of the right to freedom of opinion and expression. Document E/CN.4/Sub.2/1992/9 and Add.1 contained the conclusions and recommendations on that question submitted by Mr. Joinet and Mr. Türk to the current session of the Sub-Commission. Finally, the Sub-Commission also had before it the final report by Mr. Varela Quiros on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1992/10).

37. Mrs. KSENTINI, introducing her progress report on human rights and the environment (E/CN.4/Sub.2/1992/7), recalled that in her preliminary report on the same question (E/CN.4/Sub.2/1991/8), she had analysed the relationship between the environment and human rights, as well as the relationship between the right to a healthy environment and the other human rights, in particular the right to development. In that document she had emphasized that any damage to the environment hindered the enjoyment of a considerable number of human rights, including the right to life, to health, to security and to sufficient food.

38. The close relationship between poverty and the degradation of the environment should be highlighted. In fact, it was the poorest and most vulnerable populations who were the most affected by that phenomenon, whereas they were already suffering from underdevelopment and marginalization. They found themselves caught up in a infernal cycle of violations of rights such as the right to life and to health, which contributed to increased unemployment, emigration, they led to enforced displacement, phenomena which in turn engendered other scourges such as racism or prostitution.

39. The violations of human rights could also have a direct impact on the environment. Thus, the denial of the right to self-determination, the occupation of territories, and apartheid had the effect of altering the living environment of the peoples who were thus victimized, of confining them to ghettoes, desolate regions or reducing them to refugee status. Similarly, the violation of civil and political rights, such as the right to elect and to be elected, to take part in the conduct of public affairs in one's country, the right to information and to freedom of expression were so many impediments to the realization of the right to a healthy environment.

40. As the United Nations Conference on Environment and Development held in Rio de Janeiro in June 1992 had demonstrated so well, sustainable development was only possible through respect for the environment. In that connection, she drew the attention of the Sub-Commission to some of the principles set forth in the Rio Declaration on Environment and Development proclaimed by the Conference: human beings should be at the centre of concerns for sustainable development; States should have the sovereign right to exploit their own resources, pursuant to their own environmental and developmental policies; the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations; all States and all people should cooperate in the essential task of eradicating poverty; the public should be entitled to participate in the developmental and environmental protection policies and to be informed; States should develop national law regarding liability and compensation for the victims of pollution and other environmental damage; they should cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that were harmful or dangerous; policies of prevention must be implemented; States should immediately notify other States of any natural disasters and every effort should be made by the international community to help States so afflicted; the vital role played by women and indigenous people in environmental management and development should be recognized; the environment and natural resources of people under oppression, domination and occupation should be protected; and lastly, warfare was inherently destructive of sustainable development; States should therefore respect international law

providing protection for the environment in times of armed conflict and cooperate in its development.

41. The Conference had also adopted a comprehensive programme of action known as "Agenda 21" in the form of a plan for implementation in the various areas relating to sustainable development of the Earth, such as combating poverty, protecting and promoting health, promoting a sustainable pattern of human settlements, integrating environment and development in decision-making, protecting the atmosphere, combating deforestation and desertification, protecting the oceans and so on. The programme also dealt with strengthening the role of specific groups, including women, young people, indigenous peoples and NGOs.

42. With regard to the financial resources and mechanisms (paras. 115 to 122), the Conference recognized that economic growth, social development and poverty eradication were the first and overriding priorities in developing countries and were essential to meeting national and global sustainability objectives. The implementation of the huge sustainable development programmes of Agenda 21 would mean providing developing countries with substantial new and additional financial resources. In that connection, the developed countries had reaffirmed their commitment to reach the United Nations target of 0.7 per cent of GNP for overseas development aid, as soon as possible.

43. The Conference also set up a Commission on Sustainable Development which should report to the Economic and Social Council and would consist of representatives of States elected as members, with due regard to equitable geographical distribution. The first meeting of the Commission should be convened no later than 1993. The General Assembly, at its forty-seventh session, should determine specific organizational modalities for the work of that Commission. The Rio Conference was the culmination of the consciousness-raising campaign conducted by the international community in the area of environment and development. It had also made it possible to initiate a process, certainly an irreversible one, in view of the interest shown by Governments as well as by civil society.

44. There had also been considerable development in environmental provisions. In her progress report (E/CN.4/Sub.2/1992/7), she had reviewed relevant constitutional provisions (paras. 8 to 57), national provisions (paras. 58 to 67) and regional provisions (paras. 68 to 72). She drew the attention of the Sub-Commission to the Brazilian Constitution in particular, which recognized that everyone was entitled to an ecologically balanced environment, and which set forth the duties which fell to the public authorities to ensure respect for that right. Chapter II of the report was devoted to the decisions and comments of the regional human rights bodies. In Europe, where the right to information on the environment was recognized, the European Court of Human Rights, in various cases, had indirectly recognized the right to a healthy environment. It had also legitimized, in more than one judgement, the restrictions, in the public interest, on the use of private property. It appeared that the Inter-American Commission on Human Rights had also begun to concern itself with the environmental aspects of those human rights. With regard to the African Commission on Human and Peoples' Rights, she had not yet collected any information.

45. Regarding the decisions and comments of the United Nations Human Rights bodies, she welcomed the growing interest shown by the Committee on Economic, Social and Cultural Rights in environmental issues. Indeed, she had observed a significant trend in the Committee in assuming responsibility for environmental problems which could affect the human rights set forth in the Covenant, as demonstrated by the new guidelines for the presentation of the reports of States parties (see paras. 105 to 109 of the report). In conclusion, she thanked the secretariat which, despite its inadequate resources, had always given her its support. She also thanked the non-governmental organizations which had shown a great deal of interest in her study, especially the Sierra Club Legal Defense Fund and the National Heritage Institute.

46. Mr. Sachar took the Chair.

47. The CHAIRMAN invited Mr. van Boven to introduce his second progress report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1992/8).

48. Mr. VAN BOVEN said that his report should be read in the light of his preliminary report (E/CN.4/Sub.2/1990/10) and his first progress report (E/CN.4/Sub.2/1991/7) which dealt with the same subject. The first dealt with the relevant international norms, in particular existing international human rights norms, applicable in respect of crime prevention and criminal justice and international humanitarian law norms. The report also dealt with the right to restitution, compensation and rehabilitation under international customary law, the obligation of reparation under international law, the right to compensation and the different terms and conditions of compensation. He also raised the question of the party from whom compensation should be sought and whether a period of limitation applied. Finally, the report contained a tentative outline for the study.

49. The first progress report dealt mainly with the relevant decisions and findings of international bodies for the defence of human rights, such as the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture and finally the Inter-American Court of Human Rights.

50. He would like, in the title of the study which he had been instructed to carry out, the words "restitution, compensation and rehabilitation" to be replaced by the term "reparation". He regretted, moreover, that so little information on national legislation and practice was available to him. Nevertheless, he hoped to be able to finalize the fundamental principles and guidelines which, in conformity with his mandate, he was required to submit in his final report.

51. Chapter I of the second progress report dealt with the review of recent materials submitted to the United Nations Commission on Human Rights and relevant to the present study, in particular standard-setting activities and proposals thereto, studies and particular issues of concern, reports of rapporteurs and working groups pertaining to thematic or country-related issues. He was struck by the fact that with the exception of the report

relating to the situation of human rights in Kuwait under Iraqi occupation, so little attention was paid to the issue of the reparations due to the victims. That tentative finding was even more striking if one took into account the fact that other materials submitted to the Commission on similar issues, practices and situations were even less explicit or completely disregarded the need to do justice to the victims. It was surprising that the perspective of the victim was often overlooked. Perhaps it was considered as a complication, an inconvenience or a marginal phenomenon. A case should be made for demanding more systematic attention and action, at national and international levels, in order to obtain redress and reparation for victims of gross violations of human rights.

52. Chapter II of the report dealt with compensation to victims of gross violations of human rights and fundamental freedoms resulting from the unlawful invasion and occupation of Kuwait by Iraq. In its resolution 687 (1991), the Security Council declared that Iraq "... is liable under international law for any direct loss, damage, including environmental damage, and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait" (para. 16 of the resolution). In the same resolution, the Security Council created a fund to pay compensation for the above-mentioned damages and established a Commission to administer the fund. With regard to that Commission, he analysed the legal basis for Iraq's duty to pay compensation, the loss, damage and injury suffered in connection with gross violations of human rights and the submission of claims by Governments and individuals.

53. He drew the attention of the Sub-Commission to paragraph 30 of his report where he defined the notions of serious personal injury and mental pain and anguish and where he stated that, in the light of the progressive development of international human rights law, and the granting of locus standi to individuals before international forums, it was of eminent importance that injured persons should be able to present their claims on their own behalf, and not have to rely on the goodwill of Governments. That was on a fortiori consideration and a pressing requirement of justice in the case of stateless persons and other individuals who had no Government to act on their behalf, like the Palestinians, for example. That question had been brought out very clearly in the practice of the United Nations Compensation Commission.

54. Chapter III of the report dealt with reparation in the context of the report of the Commission of Inquiry set up to examine the observance by Romania of the Discrimination (Employment and Occupation) Convention, 1958 (No.111). The report submitted to the Governing Body of the International Labour Office by the Commission of Inquiry was very interesting because it devoted a special chapter to reparations, describing measures taken to remedy the consequences of the human rights violations committed by the former regime in Romania and to redress the wrongs suffered. The chapter on reparations in the report of the Commission of Inquiry was highly relevant because it emphasized the importance of procedural requirements such as notification of all persons concerned, existence of effective grievance procedures and conditions of impartiality and independence. It also highlighted and recommended a variety of means of redress and reparations which were designed to fulfil the requirements of justice and to meet the needs of the victims.

Finally, it highlighted the importance of the fact that the right to reparations should be insisted upon whenever systematic discrimination had been applied not only in the area of civil and political rights but also with respect to economic, social and cultural rights.

55. Chapter IV of the report dealt with reparation under the European Convention for the Protection of Human Rights and Fundamental Freedoms, article 50 of which provided that when the European Court of Human Rights found that a violation of the Convention by a contracting State had taken place, it might - the article did not say - afford just satisfaction to the victim (the injured party) provided that the consequences of the violation could not be fully repaired according to the internal law of the State concerned. That was how the European Court had awarded just satisfaction of a pecuniary nature in over 100 cases. He explained that as the Court had never yet been called upon to rule on a case involving "gross" violations of human rights and fundamental freedoms, he had not undertaken a detailed analysis of the case law in connection with article 50 of the European Convention. It should also be stressed that the Court attached great importance to the requirements of expeditiousness and effectiveness in matters concerning awards of "just satisfaction".

56. It should also be noted that a number of Governments had made payments, by way of compensation, as part of a friendly settlement reached in accordance with article 28 of the Convention. In that regard a special role was given to the European Commission of Human Rights which should not only place itself at the disposal of the parties concerned with a view to securing the settlement but which should also see to it that the settlement was achieved on the basis of respect for human rights as defined in the Convention. In practice that requirement should imply that the settlement was not merely a trade-off between the parties but that the Government concerned should also redress the causes of the violations which might have occurred and take measures to prevent their recurrence.

57. The fifth and final chapter of the report dealt with the issue of impunity in relation to the right to reparation for victims of gross violations of human rights. In many situations where impunity had been sanctioned by the law or where de facto impunity prevailed with regard to persons responsible for gross violations of human rights, the victims were effectively barred from seeking and receiving redress and reparation. In fact, once the State authorities failed to investigate the facts and to establish criminal responsibility, it became very difficult for victims or their relatives to carry on effective legal proceedings aimed at obtaining just and adequate reparation.

58. Finally, he drew the attention of the Sub-Commission to the annex to his report reproducing the conclusions of the Maastricht Conference on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms; he invited the members of the Sub-Commission to comment on the conclusions of the Conference, on which his final report would be partly based.

59. He had furthermore duly taken note of the report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1992/34) paragraphs 86 to 91 of which recalled the tragedy experienced during the Second World War by the Korean women who had been abducted by the Japanese army for purposes of prostitution In its recommendation on the prevention of traffic in persons and exploitation of the prostitution of others (pp. 27 and 28 of the above-mentioned report), the Working Group requested the Secretary-General to submit to the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms information received by the Working Group on Contemporary Forms of Slavery regarding the situation of women forced to engage in prostitution during wartime. At its present session, the Sub-Commission had endorsed that request (see paragraph 18 of draft resolution E/CN.4/Sub.2/1992/L.3).

60. He assured the Sub-Commission that he would make a careful study of the information which the Secretary-General would transmit to him and he hoped to receive the comments of the country or countries directly concerned by that matter. In conclusion, he informed the Sub-Commission that, as planned, he would submit to it next year his final report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms.

The meeting rose at 1 p.m.